

REMARKS

Status of the Claims

Claims 1-7 and 9-13 are presently pending in this application.

Supplement to Claim rejections under 35 U.S.C. § 103

The Office Action rejects claims 1, 3-6, and 11-13 as being unpatentable over Cha (United States Patent Publication No. 2005/0056631) in view of Nakagawa et al. (United States Patent Publication No. 2002/0189128).

A rejection under 35 U.S.C. § 103(a) can be overcome by antedating either reference as available prior art under 35 U.S.C. § 102. MPEP 2141.01. Cha was published after the filing date of this application, therefore it is not part of the prior art under 35 U.S.C. § 102(a) or (b). A prior art rejection based on 35 U.S.C. § 102(e) can be overcome by submitting an affidavit or declaration under 37 CFR 1.131. MPEP 2136.05. Applicants submit the attached declaration signed by all inventors of the present application establishing invention of the subject matter of the rejected claims in the United States prior to the filing date of the Cha reference. Therefore, the Cha reference cannot form the basis of a rejection under 35 U.S.C. § 103(a). MPEP 2141.01.

Pursuant to 37 CFR 1.116(e), Applicants respectfully submit that good and sufficient reasons exist for accepting the declaration attached to this response. In short, Applicants submitted a declaration in response to a rejection based on the Cha reference in a non-final Office Action that was substantially similar to a prior declaration submitted earlier in prosecution. The later declaration was rejected because it was not signed by all inventors, and did not allege acts in the United States. Inadvertently, on February 19, 2008, an attempt was made to correct these deficiencies, but the Exhibit A referred to in that declaration was

inadvertently omitted. Applicants respectfully submit that the facts described above provide good and sufficient reasons for accepting the attached declaration at this time.

On October 19, 2007, in response to a non-final Office Action dated June 9, 2007, Applicants submitted a declaration signed by the first named inventor, Michael CaFaro, in an attempt to overcome the Cha reference. Attached to that declaration was a document entitled Exhibit A, showing the inventors possession of the claimed invention. Exhibit A to the CaFaro declaration is the same Exhibit A that was inadvertently omitted from most recent submission by Applicants. The CaFaro declaration was substantially similar to the declaration signed by Gary Koenemann, another named inventor, that was submitted in response to the November 16, 2006 Office Action.

The Final Office Action rejected the CaFaro declaration because it was not signed by all named inventors, and did not allege activity in the United States. 12/18/07 Final Office Action, page 3. The CaFaro declaration alleged that "Prior to September 16, 2003, the filing date of the Cha reference, ..., we had conceived and tested the claim subject matter in the application identified above, in this country, as evidenced by the invention disclosure attached hereto as Exhibit A." Although the CaFaro declaration did allege "in this country," Applicants recognize that this declaration did not specifically state that the country in question was the United States of America. Based on the prior Koenemann declaration, Applicants respectfully believed that this language would again be sufficient to overcome the asserted reference. Applicants attempted to correct this deficiency in a subsequent declaration which was signed by all named inventors, and submitted on February 19, 2008. However, unlike the prior declarations, Exhibit A was inadvertently omitted. Applicants were not made aware of this omission until receipt of the advisory office Action on March 19, 2008.

Under the above circumstances, Applicants respectfully submit that there is good cause to accept the attached declaration at this time. Applicants respectfully believe that the intent and ability to swear-behind the Cha reference was in the record prior to the Final Office Action. The attached declaration merely supplements facts that Applicants believed were implied by the earlier CaFaro declaration, which was substantially similar to the previously accepted Koenemann declaration. Applicants respectfully submit that the attached declaration will traverse the Cha rejection and place claims 1, 3-6, and 11-13 in condition for allowance, and is therefore necessary for that reason.

Based on the submission of the attached declaration, the Applicants respectfully request that the rejection of the claims under 35 U.S.C. § 103(a) with respect to Cha be withdrawn.

SUMMARY OF RESPONSE

In light of the above remarks, and the attached declaration, Applicants respectfully submit that the declaration should be accepted and that the rejection based on Cha should be withdrawn. Accordingly, reconsideration and favorable action in this case are respectfully requested. If the Examiner believes that a telephone conference would expedite the prosecution of the case, the Examiner is invited to call the undersigned at the number below.

Respectfully submitted,

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